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David Zapolsky, Esq.  
Senior Vice President and General Counsel  
1200 12<sup>th</sup> Avenue South  
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Seattle, Washington 98144-2734

Via FedEx Overnight Delivery

Re: Counterfeit/Knock-Off Fuse Chicken, LLC Product on Amazon.com

Dear Mr. Zapolsky:

This law firm represents Fuse Chicken, LLC ("Fuse Chicken"), the maker of the Toughest Cable on Earth®. Genuine Fuse Chicken products are sold on Amazon through Fuse Chicken's storefront. Fuse Chicken also sells its products directly to Amazon. Recently, we have discovered that Amazon is selling counterfeit and knock-off Fuse Chicken products through Amazon Warehouse Deals and Amazon Vendor Express, in violation of Fuse Chicken's US trademarks and registered copyrights.

Obviously, because of the liability issues associated with counterfeit and knock-off product, this problem should be as important to Amazon as it is to Fuse Chicken. I write to you seeking your assistance in addressing these problems. Our goal is to work hand-in-hand with Amazon to cleanse the marketplace of counterfeit and knock-off Fuse Chicken products. Currently, there are approximately nine unauthorized sellers on Amazon selling what is purported to be Fuse Chicken product. Amazon and Fuse Chicken are the only authorized sellers on Amazon. The source of the product sold by other sellers is unknown. Given Fuse Chicken's limited distribution and aggressive brand protection efforts, we believe that the vast majority of unauthorized sellers are dealing in counterfeit and/or knock-off goods. This is exemplified by the growing number of reviews of Fuse Chicken product on Amazon describing the poor quality of counterfeit products that are damaging the Amazon and Fuse Chicken brands.

EXHIBIT

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### Fuse Chicken's Brand Protection Program

At the heart of every brand protection program is intellectual property. Fuse Chicken has four pending US patent applications, three issued EU patents, and one issued Chinese patent. Fuse Chicken has one issued US Copyright, which includes the majority of its images and has seventeen pending US copyright applications, which include all Fuse Chicken packaging. Fuse Chicken has six issued US trademarks, six pending US trademark applications, two pending Chinese trademark applications, and two pending South Korean trademark applications. Fuse Chicken aggressively enforces its intellectual property worldwide.

To maintain its brand integrity and flow of product into the marketplace, Fuse Chicken limits its distribution and executes an authorized reseller agreement with all retailers selling Fuse Chicken product. Currently, and at all times relevant to the events described herein, Fuse Chicken has two US distributors. Fuse Chicken requires its distributors to provide monthly sell-through reports of all retailers purchasing Fuse Chicken product to ensure that its distributors are not selling product to unauthorized sellers. Fuse Chicken's distributors provide potential retailers with Fuse Chicken's authorized reseller agreement and the distributors are not permitted to sell to any retailer that has not completed the agreement and been pre-approved by Fuse Chicken. Fuse Chicken's authorized reseller agreement specifically prohibits retailers from selling on Amazon. Upon receipt of the authorized reseller agreement, Fuse Chicken engages in rigorous due diligence to investigate the retailer, verifies that the retailer has a brick and mortar store, and that the retailer is a good fit for the Fuse Chicken brand.

Fuse Chicken uses Amazon's Report Infringement portal to report intellectual property violations on Amazon. We estimate that we have submitted close to one thousand intellectual property complaints via the portal within the past six months. For the most part, the infringing listings have been removed. However, the larger issue relates to third party sellers, including Amazon, that are selling counterfeit and knock-off product under Fuse Chicken's ASINs. Because these sellers are linking to Fuse Chicken's images and product descriptions, it is impossible for Fuse Chicken to verify whether the third-party sellers are selling genuine Fuse Chicken product and whether counterfeit/knock-off product is commingled with genuine Fuse Chicken product. To combat that limitation, Fuse Chicken regularly purchases product from Amazon third party sellers to verify authenticity.

### Bobine Counterfeits/Knock-offs

Currently, there is a rash of counterfeit "Fuse Chicken Bobine Auto iPhone Lightning Car Dock (MFi Certified)" (ASIN B00V53FCOU) on Amazon. The genuine product is pictured below as Image 1; the counterfeit product is pictured below as Image 2.

Image 1<sup>1</sup>

Image 2

The most obvious difference between the product packaging is the hang tag. The genuine product has a ribbon hang tag (Image 1). The counterfeit product has a braided hang tag (Image 2). Although not visible in the images, there is also a difference between the branding on the black base of the phone stand. Specifically, the counterfeit product logo has a large gap between the K and E than the genuine Fuse Chicken logo. As more fully discussed below, counterfeit product is currently listed and sold under Fuse Chicken's ASIN B00V53FCOU. While Fuse Chicken does not countenance any counterfeit product, it understands the difficulty that Amazon may have in distinguishing genuine Fuse Chicken product from counterfeit Fuse Chicken product because the counterfeiters have copied virtually every aspect of the product and its packaging.

In addition to the counterfeit Bobine products, there also a knock-off Bobine product. This product is being sold under Fuse Chicken's ASIN B00HYY8CFK entitled "Fuse Chicken BOBINE Charge Cable/Stand (MFi Certified Lightning)." The knock-off product does not purport to be Fuse Chicken product either through its packaging or product branding. The knock-off product is labeled Cable Data and the branding on the black base of the phone stand is "Creative Hand." Image 3 below is a photo of the Cable Data product packaging.

<sup>1</sup> Fuse Chicken recently changed the packaging for the Bobine Auto products because of counterfeiters. Image 1 is Fuse Chicken's old packaging that the counterfeiters have unlawfully replicated.





Image 3



Image 4

The packaging displayed in Image 3 infringes Fuse Chicken's US Copyright registration number TX 8-278-584, entitled "[FUSE]chicken Celebrating 5 Years: 2012-2017,"<sup>2</sup> as it includes Fuse Chicken's images on the product packaging. Most recently, the makers of the Cable Data product produced alternate packaging after receiving thousands of copyright infringement complaints from Fuse Chicken. The new product packaging no longer embeds Fuse Chicken images on the packaging. Both the old and new Cable Data product is in the marketplace. Image 4 is a photo of Cable Data's new product packaging. While the copyright infringement has been rectified through the new packaging, this product is still being sold as genuine Fuse Chicken product under Fuse Chicken ASIN B00HYY8CFK. The genuine Fuse Chicken product packaging for this ASIN is pictured below as Image 5.



Image 5

<sup>2</sup> Fuse Chicken's registered copyright images (reg. no. TX 8-278-584) are accessible at [www.fusechicken.com/pages/copyrightphotos](http://www.fusechicken.com/pages/copyrightphotos).

Fuse Chicken cannot comprehend how Amazon is fulfilling orders of Fuse Chicken ASIN B00HYY8CFK with the Cable Data product as the Cable Data product and packaging does not purport to be Fuse Chicken product and the packaging is completely different. Yet, the Cable Data product is being sold as Fuse Chicken ASIN B00HYY8CFK by third party sellers and Amazon FBA sellers.

As detailed below, Fuse Chicken has repeatedly put Amazon on notice of the counterfeits and knock-offs that are being sold under its ASINs. Amazon has done nothing to assist Fuse Chicken in ridding the marketplace of these unlawful products.

#### Amazon's Sales Of Counterfeit/Knock-Off Products

Fuse Chicken has discovered that Amazon is currently selling counterfeit and knock-off products under Fuse Chicken's ASINs. Fuse Chicken has verified this fact through test buys, consumer reviews, and Vendor returns. Below are three examples of counterfeit and knock-off products being sold as Fuse Chicken product.

##### 1. Amazon Warehouse Deals

Jon Fawcett, the founder of Fuse Chicken, placed order number 114-3710947-9469824 for what was listed as Fuse Chicken BOBINE Charge Cable/Stand (MFi Certified Lightning) (ASIN B00HYY8CFK) sold by Amazon Warehouse Deals. The product delivered pursuant to Mr. Fawcett's order was Cable Data:



A simple review of the Cable Data product indicates that it is not Fuse Chicken product as there is no Fuse Chicken branding on the packaging or product. In short, Amazon is palming off Cable Data product as Fuse Chicken product in violation of 15 U.S.C. § 1125.

##### 2. Ships And Sold By Amazon—Vendor Express Counterfeit/Knock-Off Product

Amazon is selling knock-off Fuse Chicken product directly to consumers via Vendor



Express. This month, Fuse Chicken received a vendor return from Amazon through Vendor Express. The returned product was the Cable Data product. Pictured below as Image 6 is a photo of the Vendor Express product returned to Fuse Chicken.<sup>3</sup>



Image 6

There should be no counterfeit product or knock-offs in Amazon's Vendor program unless Amazon is purchasing knock-off product or is commingling Vendor product with third-party Amazon FBA product. Neither alternative is acceptable. Based on correspondence with Jeremiah Price, an Amazon Business Development Manager, Fuse Chicken learned that Amazon did purchase Fuse Chicken product from someone other than Fuse Chicken.

On November 29, 2016, Mr. Price told Mr. Fawcett that he believed that Amazon was directly purchasing Fuse Chicken product from a source other than Fuse Chicken. Mr. Price explained that Amazon purchased from a third-party source because the "price to us was much lower than what you were offering." In response, Mr. Fawcett informed Mr. Price that he believed the product purchased by Amazon from the third-party source was counterfeit or a knock-off. Mr. Fawcett believed that Amazon was selling counterfeit/knock-off product through the Vendor Express based upon the awful reviews of the product that were posted after Amazon stopped purchasing from Fuse Chicken directly. Mr. Fawcett requested a sample of the third-party product and related pricing information. Mr. Price responded saying that Amazon was no longer purchasing from the third-party source, that he had no access to the data requested, and that Amazon had sold through the product and no samples were available.

Mr. Fawcett became suspicious of Amazon's direct sales of its Bobine product line based on the lack of orders that Amazon placed with Fuse Chicken. In October 2016, Amazon placed an order for 306 units of the Bobine products. In November and December 2016, Amazon placed no orders for the Bobine products. Yet, during that time period, there was an unusual spike in the number of negative product reviews for the Bobine products. Fuse Chicken believes that the counterfeit issues began in November 2016

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<sup>3</sup> Fuse Chicken filed a dispute with Vendor Express (ID DSPT10342182367) regarding this return and alerted Amazon that the returned product was not genuine Fuse Chicken product.

when Amazon began purchasing product from a third-party source. Fuse Chicken has done an analysis of its reviews on Amazon before and after November 1, 2016 when the counterfeit product began to appear. As demonstrated in the graph below, Fuse Chicken's 4 and 5 star reviews dropped from 49.02% of reviews to 22.73% of reviews. Simultaneously, Fuse Chicken's one star reviews almost doubled from 29.41% of reviews to 50% of reviews.

Reviews

	Average Stars	Total Reviews	5 Star	%	4 Star	%	3 Star	%	2 Star	%	1 Star	%
<b>Before Nov 1 2016</b>	3.13	102	36	35.29%	14	13.73%	9	8.82%	13	12.75%	30	29.41%
<b>After Nov 1 2016</b>	2.21	66	10	15.15%	5	7.58%	7	10.61%	11	16.67%	33	50.00%

4-5 Stars dropped more than half from 49.02% down to 22.73  
 1 Star almost doubled from 29.41% up to 50%

On December 19 and December 24, 2016, Mr. Fawcett communicated with Mr. Price regarding the counterfeit listings on Amazon. On December 24, 2016, Mr. Fawcett provided Mr. Price with instances of counterfeit products, counterfeit sellers, and negative reviews resulting from counterfeit product. Mr. Fawcett requested that "all seller listings on our ASINs be closed except for Fuse Chicken" and warned that he suspected "that Amazon's own stock may be counterfeit." Mr. Fawcett requested that "Amazon stop selling its stock until we can verify it by photos from your warehouse." Mr. Price's response was to "submit a case with VE and let them know about the fraudulent seller." That same day, Mr. Fawcett did submit a detailed email to Amazon Vendor Express. A copy of that email is attached hereto as Exhibit 1. In response, Mr. Fawcett received a canned email instructing him to do what he had already done – file a report at [copyright@amazon.com](mailto:copyright@amazon.com). After complaining to Mr. Price about the inaction, Mr. Price admitted that he had "no access to third party listings, but I do show EZ4MOB is an active third party seller whose price is way too low to be legit." Mr. Fawcett responded by stating that seller EZ4MOB was a copycat seller (i.e. the Cable Data product) and not a counterfeit seller. Again, Mr. Fawcett warned that it appeared that the "counterfeit come from Amazon's stock base . . . This is why it is so urgent for us . . . because it appears . . . that the counterfeit stock is actually Amazon's stock."

Mr. Price did not respond. Accordingly, on January 30, 2017, Mr. Fawcett again contacted Mr. Price requesting that Amazon "remove all sellers from our listings on Amazon and require our approval of each seller [and] require Amazon to only purchase as a vendor from Fuse Chicken directly." Mr. Price responded by referring all complaints to "VE" and stated that "Amazon should not be ordering product from anyone else directly since you are the direct manufacturer." Mr. Fawcett responded by specifically asking Mr. Price to enroll Fuse Chicken in the brand-gating program. The following day, Mr. Price responded that brand gating was only open to "major brand names in certain categories that are selling directly to Amazon or for third party sellers trying to sell



specific products . . . only because they spend millions of dollars on Amazon . . .” The only way that Fuse Chicken could protect its brand from Amazon and counterfeit/knock-off sellers was to stop fulfilling Amazon’s orders.

### 3. Third-Party Sellers Selling Under Fuse Chicken’s ASINs

Beginning in November 2016, Fuse Chicken sent numerous emails to Mr. Price, regarding issues with counterfeits, knock-offs and Fuse Chicken sales to Amazon. For example, on November 21, 2016, Mr. Fawcett reported counterfeit products being sold by a third-party seller that was wrongfully using “Fuse Chicken” as its store name (Case 1947591571). Mr. Price indicated that the case was under review and suggested that Mr. Fawcett file another complaint at [notice@amazon.com](mailto:notice@amazon.com). Mr. Fawcett did as instructed and got no resolution. Mr. Price indicated that [notice@amazon.com](mailto:notice@amazon.com) is a “higher department” and that he did not have any contacts in that department, so was unable to assist or explain why the complaints had not been acted upon.

Again, December 24, 2016, Mr. Fawcett sent to Mr. Price a copy of a verified purchase review of counterfeit “Fuse Chicken Bobine Auto iPhone Lightning Car Dock (MFi Certified)” (ASIN B00V53FCOU). Based upon the product photo that the reviewer uploaded, Mr. Fawcett was able to identify the product as counterfeit. Mr. Price was unable to assist Fuse Chicken and again he recommended submitted a case to “VE” to “have them start removing the negative fraud reviews.” VE did not remove the negative review and the review of counterfeit Fuse Chicken product is still on Amazon today:

★☆☆☆☆ Broke in a week.

By Amazon Customer on December 17, 2016

Verified Purchase

I bought this product and sent it to my dad in Brazil through a friend.

It got there in perfect conditions, my dad used it for a week and he was really enjoying it, until the dock broke.

I am really unsatisfied with this product, it is very expensive and it broke in a week. Really bad quality.



We know that the Cable Data product, wrongfully listed under a Fuse Chicken ASIN, is still being sold. On May 14, 2017, Fuse Chicken filed complaint through the Amazon portal against third-party seller sffoto for listing Cable Data product under a Fuse Chicken ASIN B01CNSQMNU.

### Sales of Counterfeit/Knock-Off Fuse Chicken Product Under Non-Fuse Chicken ASINs

Fuse Chicken has filed multiple complaints regarding the Cable Data product through the Amazon Infringement Report portable, stating that the product packaging contained



Fuse Chicken's registered copyrighted images and requesting that all Cable Data product be removed from Amazon. Amazon responded by removing the specific listings complained of, but made no assurances that all Cable Data product was eradicated from Amazon.

Requested Assistance From Amazon

While Fuse Chicken would like to continue selling on Amazon and to Amazon directly, it cannot do so given the current landscape. Accordingly, Fuse Chicken requests the following from Amazon:

1. Immediate brand-gating for all Fuse Chicken products;
2. Prohibition of the sale of any Fuse Chicken products from any seller other than Fuse Chicken (including Amazon, LLC and Amazon Warehouse Deals);
3. Allow Fuse Chicken to review all stock in all Amazon distribution centers for all Fuse Chicken ASINs to confirm that the stock is genuine;
4. Remove all one and two star reviews from "Fuse Chicken BOBINE Charge Cable/Stand (MFi Certified Lightning)" (ASIN B00HYY8CFK) and "Fuse Chicken Bobine Auto iPhone Lightning Car Dock (MFi Certified)" (ASIN B00V53FCOU) products that are dated after November 1, 2016 unless and until it can be confirmed that consumers received genuine Fuse Chicken products;
5. Return all Fuse Chicken FBA stock on all Fuse Chicken ASINs at no cost to Fuse Chicken;
6. Segregate all Cable Data product from Amazon distribution centers and provide Fuse Chicken with the contact information for all sellers and the number of units sold by those sellers so that Fuse Chicken can prosecute Cable Data sellers for copyright infringement; and
7. Return all Fuse Chicken FBA product sold by third party sellers to the respective sellers and inform the third-party sellers that they are no longer authorized to sell Fuse Chicken product on Amazon and provide Fuse Chicken with the contact information for all such sellers and the number of units sold by those sellers so that Fuse Chicken can communicate directly with the sellers regarding potential intellectual property infringements.

As detailed herein, Fuse Chicken has repeatedly informed Amazon of the counterfeit and knock-off problems plaguing the Fuse Chicken brand on Amazon. Amazon has done nothing to remedy these intellectual property infringements and has created substantial financial and reputational losses to Fuse Chicken. Fuse Chicken estimates that since November 2016 that it has lost between \$50,000 and \$100,000 in sales due to counterfeits and knock-offs sold on Amazon. Given the substantial losses, Fuse Chicken is willing to leave the Amazon marketplace completely and pursue its legal remedies absent real cooperation from Amazon. Please respond to this correspondence with five business days.

This letter does not list all instances of grievance that Fuse Chicken has against Amazon

and is sent without prejudice to any of Fuse Chicken's rights and remedies, which are expressly reserved.

Respectfully,

A handwritten signature in blue ink that reads "Kathleen M. Walker". The signature is written in a cursive, flowing style.

Kathleen M. Walker

cc: Jon Fawcett